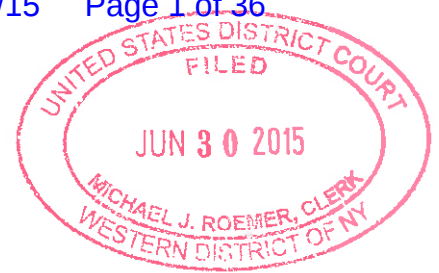


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK



DERRICK EVANS, Plaintiff,

COMPLAINT

v.  
Corrections Officer, EL. BENNETT,  
Corrections Officer, M. MAWHIR,  
Corrections Officer, M. WILLIAMS,  
Corrections Sergeant, G. HILL  
Disciplinary Hearing Officer, MAHUNIT.  
Superintendent, P. CHAPPIUS  
Director, Special Housing, ALBERT PRACK  
in their individual capacities,  
Defendants.

CIVIL ACTION

No. 15 CIV. 395

JURY TRIAL  
DEMANDED

I. COMPLAINT

Plaintiff, Derrick Evans, pro-se for his complaint states as follows:

II. PARTIES, JURISDICTION and VENUE

1.) Plaintiff, Derrick Evans, was confined at the Elmira Correctional Facility (hereafter known as (ECF)), located at 1879 Davis st. and Bancroft rd. in the city of Elmira, in the state of New York, from January 7<sup>th</sup>, 2014 to October 31<sup>st</sup>, 2014. Plaintiff is currently confined at the Great Meadow Correctional Facility, P.O. Box 51, Comstock, N.Y. 12821

2.) Plaintiff, Derrick Evans, is and was at all relevant times mentioned herein, an adult citizen of the United States and a resident of the state of New York.

3.) Defendant Corrections Officer (C.O.) E.L. BENNETT was at all relevant times mentioned herein employed as a prison guard at the (ECF).

4.) Defendant (C.O.) M. MAWHIR was at all relevant times mentioned herein employed as a prison guard at the (ECF).

5.) Defendant (C.O.) M. WILLIAMS was at all relevant times mentioned herein employed as a prison guard at the (ECF).

6.) Defendant Corrections Sergeant G. HILL was at all relevant times mentioned herein employed as a prison guard supervisor at the (ECF)

7.) Defendant Disciplinary Hearing Officer, **MAHUNIT** was at all relevant times mentioned herein employed as the Vocational Supervisor at the (ECF).

8.) Defendant Superintendent, **P. CHAPPIUS** was at all relevant times mentioned herein employed as the superintendent at the (ECF).

9.) Defendant Director, Special Housing, **A. PRACK** was at all relevant times mentioned herein employed at the New York State Department of Corrections and Community Supervision and oversaw the review of inmate disciplinary appeals.

10.) This action arises and is brought pursuant to 42 U.S.C. Section 1983 to remedy the deprivation, under color of state law, of rights guaranteed by the **EIGHTH** and **FOURTEENTH** Amendments to the United States Constitution. This Court has Jurisdiction over this action pursuant to 42 U.S.C. Sections 1331 and 1343.

11.) This cause of action arose in the **WESTERN** District of New York. Therefore **VENUE** is proper under 28 U.S.C. Section 1391 (b).

### III. PREVIOUS LAWSUITS BY PLAINTIFF

12.) Plaintiff has filed NO other lawsuits dealing with the same facts involved in this action or otherwise relating to his imprisonment State or Federal.

### IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13.) Plaintiff has exhausted all available administrative remedies pertaining to the claims outlined herein.

### V. STATEMENT OF CLAIM

14.) At all relevant times mentioned herein, defendants were "persons" for purposes of 42 U.S.C. Section 1983 and acted under color of state law to deprive plaintiff of his Constitutional rights guaranteed by the **EIGHTH** and **FOURTEENTH** Amendments, as set forth more fully below:

### VI. STATEMENT OF FACTS

15.) On May 26, 2014 at approximately 7:58 pm at the Elmira Correctional Facility (hereafter known as (ECF)), in an area designated as the "Fieldhouse" the plaintiff became the subject of an unprovoked physical attack at the hands of another inmate.

16.) For the duration of this attack the plaintiff was repeatedly punched in the head face and neck by this other inmate and at no time did the plaintiff throw any punches towards any person including the other inmate or staff nor did the plaintiff offer any but minimal resistance to the attack other than to protect his face, head and neck from further blows from this other inmate. (SEE surveillance video).

17.) Upon both the attacking inmate and the plaintiff falling to the ground, the plaintiff was then grabbed by his feet by two Officers and dragged a short distance across the fieldhouse floor. (SEE surveillance video)

18.) Defendants E.L. BENNETT, M. MAWHIR and M. WILLIAMS, along with several other unidentified Correction Officers then set upon the plaintiff with several blows to the face and head area. The plaintiffs wrists, ankles and shoulders were painfully bent at awkward angles and the plaintiffs back was repeatedly struck, twisted and pressured with defendants knees and subjected to excessive amounts of weight while defendant E.L. BENNETT purposefully and deliberately raised the plaintiff's head and neck by holding plaintiff in a chokehold and pulling upwards. At the same time defendants M. MAWHIR, M. WILLIAMS and others purposefully and deliberately raised the Plaintiffs lower body while keeping pressure on plaintiffs back, bending the plaintiffs spine backwards in an unnatural position, injuring the plaintiffs spine. At no time did the plaintiff resist.

19.) During this entire incident defendant Correction Supervisor G. HILL stood by witnessing the other defendants actions and made no attempt to stop defendants from engaging in the application of unnecessary use of excessive force and deliberately injuring plaintiff.

20.) On May 26<sup>th</sup> 2014 defendant E.L. Bennett then submitted a false misbehavior report and a false use of force report for the sole purpose of justifying the unnecessary and excessive use of physical force. (SEE EXHIBIT 'A')

21.) On May 26<sup>th</sup> 2014 defendant M. Mawhir also submitted a false use of force report to justify such force (SEE EXHIBIT 'A')

22.) On May 26<sup>th</sup> 2014 defendant G. Hill also submitted a false misbehavior report (SEE EXHIBIT 'A')  
Use of force

23.) On May 29<sup>th</sup> 2014 defendant Mahunit conducted a superintendents disciplinary hearing based upon the false misbehavior report submitted by E.L. Bennett (SEE EXHIBIT 'B')

24.) On June 6<sup>th</sup> 2014 the plaintiff appealed defendant Mahunit's decision. That decision was affirmed by defendant A. Prack on August 5<sup>th</sup> 2014. (SEE EXHIBIT 'C')

25.) On June 26<sup>th</sup> 2014 the plaintiff filed a grievance pertaining to the false misbehavior and false use of force claims. (SEE EXHIBIT 'C') Grievance was denied.

26.) On July 21<sup>st</sup> 2014 the plaintiff appealed the grievance to defendant superintendent P. Chappius who denied the grievance. (SEE EXHIBIT 'C')

27.) On 12-3-14 the central office review committee also denied the grievance, thereby exhausting all administrative remedies available to plaintiff. SEE EXHIBIT 'C')

28.) On June 23<sup>rd</sup> 2014 plaintiff sought to have the video surveillance footage preserved. This request was granted. (SEE EXHIBIT 'D') AND (SEE EXHIBIT 'E')

## VII COUNT ONE: EXCESSIVE USE OF FORCE

29.) Defendants **E.L. BENNETT, M. MAWHIR** and **M. WILLIAMS** did in fact apply unnecessary and excessive use of physical force upon the plaintiffs' person with malicious intent to cause serious physical injury, succeeding in causing such injury and utilizing the inmate disciplinary system to justify and mask their actions. U.S. Const. Amend. 8 violation. Cruel and Unusual Punishment.

30.) Defendant **G. HILL** did in fact exercise deliberate indifference when he failed to protect the plaintiff from harm, that as his duty as supervisor should have been reasonably foreseen, failed to intervene and participated in the attempt to justify the use of force by filing an inaccurate use of force report. U.S. Const. Amend. 8, violation. Cruel and Unusual Punishment.

## VIII COUNT TWO: DENIAL OF DUE PROCESS

31.) Defendants **P. Chappius, A. Prack** and **Mahunit** deliberately failed in their respective duties to correct the actions of their subordinates by arbitrarily and capriciously denying the defendant his due process rights to a fair and impartial disciplinary hearing, hearing officer and appeal process which resulted in the



defendant being confined to his cell for 90 days as a disciplinary sanction. **U.S. Const. Amend. 14** Right to due Process.

32.) As a result of the actions of the above named defendants the plaintiff now suffers from debilitating, progressive and chronic back and spinal pain which has and will require future medical attention and medication. These injuries currently and will likely to continue to handicap the plaintiff to the point of preventing the plaintiff from participating in and enjoying his prior physical agility, strength, range of motion and physical activities.

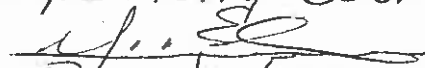
33.) Also, as a result of the actions of the above named defendants the plaintiff has and likely will continue to suffer from emotional trauma and mental anguish which includes but is not limited to loss of sleep, persistent and intense anxiety, paranoia, bouts of depression and deep suspicion for D.O.C.C.S. employees which has and will require medication and medical attention.

34.) Plaintiff requests the amount of \$500,000 against defendants **E.L. Bennett**, **M. Mawhir**, **M. Williams** and **G. Hill**.  
 \$500,000 against defendant **P. Chappius**. \$250,000 against defendant **Mahunit**. \$250,000 against defendant **A. Prack**.  
 \$1.5 million dollars in compensatory and punitive damages against the above named defendants jointly and severally.

**WHEREFORE**, Derrick Evans prays for judgment in his favor against all defendants in an amount sufficient to compensate him, but in any event no less than \$1.5 million dollars for the physical pain and mental and emotional anguish suffered by him and for future suffering due to the intentional misconduct, and deliberate indifference of the above named defendants, together with his attorney fees and costs, and such additional relief as the Court may deem just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted

  
 Derrick Evans  
 pro-se

## Defendant Information

Name of Defendant: E.L. Bennett  
Official Position of Defendant: Corrections Officer  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

Name of Defendant: M. Williams  
Official Position of Defendant: Corrections Officer  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

Name of Defendant: M. Mawhir  
Official Position of Defendant: Corrections Officer  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

Continued on next Page

/ / / /

## Defendant Information Continued

Name of Defendant: G. Hill  
Official Position of Defendant: Corrections Sgt.  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

Name of Defendant: P. Chappius  
Official Position of Defendant: Facility Superintendent  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St. Elmira, N.Y. 14902

Name of Defendant: Mr. Mahunit  
Official Position of Defendant: Vocational Supervisor  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

Name of Defendant: Albert Prack  
Official Position of Defendant: Director of Special Housing  
Defendant is sued in his Individual Capacity  
Address of Defendant: Elmira Correctional Facility  
1879 Davis St Elmira, N.Y. 14902

# EXHIBIT A

CONTENTS:

- (1) INMATE MISBEHAVIOR REPORT DATED: MAY 26, 2014.
- (1) UOF REPORT #14-0032 from: C.O.E.L.BENNETT
- (1) UOF REPORT #14-0032 from: C.O.M.MAWHIR
- (1) UOF REPORT #14-0032 from: C.O.M.WILLIAMS
- (1) UOF REPORT #14-032 from: SGT. G. HILL



FORM 2171A (1/12)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Side 1

Correctional Facility

## INMATE MISBEHAVIOR REPORT ♦ INFORME DE MAL COMPORTAMIENTO DEL RECLUSO

1. NAME OF INMATE (Last, First) ♦ NOMBRE DEL RECLUSO (Apellido, Nombre) <i>Evans, L. Keith</i>		NO ♦ NÚM <i>1330689</i>	HOUSING LOCATION ♦ CELDA <i>1510</i>
2. LOCATION OF INCIDENT ♦ LUGAR DEL INCIDENTE <i>Field House</i>		INCIDENT DATE ♦ FECHA <i>5/26/14</i>	INCIDENT TIME ♦ HORA <i>Approx. 7:20pm</i>
3. RULE VIOLATION(S) ♦ VIOLACIÓN/ES <i>106.10 direct order, 104.12 disturbance, 104.41 violent conduct, 104.13 Fighting</i>			
4. DESCRIPTION OF INCIDENT ♦ DESCRIPCIÓN DEL INCIDENTE <i>On the above date and approximate time I, C.E. St. Bernard reported to a two man fight between Evans 1330689, 7-5-19, and Williams OSB0689, 7-7-8. With Approximate 178 inmates present, EVANS ignored several direct orders to stop exchanging closed fist blows to inmate Williams head and upper body. Use of force was needed to gain inmate EVANS 1330563 compliance. After mechanical restraints were applied there was no further force. INMATE EVANS WAS ESCORTED to medical without incident.</i>			
5. ENDORSEMENTS OF OTHER EMPLOYEE WITNESSES (if any) SIGNATURES FIRMAS			
REPORT DATE ♦ FECHA <i>5/26/14</i>		REPORTED BY ♦ NOMBRE DE LA PERSONA QUE HACE EL INFORME <i>St. Bernard</i>	SIGNATURE ♦ FIRMA <i>[Signature]</i>
TITLE ♦ TÍTULO <i>[Signature]</i>			
2. _____ 3. _____			

NOTE: Fold back Page 2 on dotted line before completing below.

6. WERE OTHER INMATES INVOLVED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		IF YES, GIVE NAME & # <i>Williams OSB0689 - 7-7-8</i>	
¿HUBO OTROS RECLUSOS ENVUELTOS? SÍ <input type="checkbox"/> NO <input type="checkbox"/>		DE SER SÍ DÉ LOS NOMBRES Y DIN	
7. AT THE TIME OF THIS INCIDENT, WAS INMATE UNDER PRIOR CONFINEMENT/RESTRICTION? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		OR • O	
¿ESTUVO EL RECLUSO CONFINADO/RESTRINGIDO PREVIO AL INCIDENTE? SÍ <input type="checkbox"/> NO <input type="checkbox"/>			
AS A RESULT OF THIS INCIDENT, WAS INMATE CONFINED/RESTRICTED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
¿SE CONFINÓ/RESTRINGÓ AL RECLUSO COMO RESULTADO DE ESTE INCIDENTE? SÍ <input type="checkbox"/> NO <input type="checkbox"/>			
8. WAS INMATE MOVED AT ANOTHER HOUSING UNIT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
¿MUDARON AL RECLUSO A OTRA UNIDAD DE VIVIENDA? SÍ <input type="checkbox"/> NO <input type="checkbox"/>			
IF YES, (a) CURRENT HOUSING UNIT _____ (b) AUTHORIZED BY _____			
DER SER SÍ, (a) UNIDAD DE VIVIENDA ACTUAL _____ (b) AUTORIZADO POR _____			
9. WAS PHYSICAL FORCE USED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> (IF YES, FILE FORM 2104)			
¿SE USÓ FUERZA FÍSICA? SÍ <input type="checkbox"/> NO <input type="checkbox"/> (DER SER SÍ, SOMETA EL FORMULARIO No. 2104)			
AREA SUPERVISOR ENDORSEMENT _____			
ENDOSO DEL SUPERVISOR DEL ÁREA _____			

Distribution: WHITE - Disciplinary Office CANARY - Inmate (After review) ♦ Distribución: BLANCA - Oficina Disciplinaria AMARILLA - Recluso (después de la revisión)

644

Form IC-22A

State of New York Department of Correctional Services  
Elmira Correctional Facility  
Inter-Departmental Communication

To: SUPT. CHAPPIUS

From: EL. Bennett C.O.

Subject: UOF 14-0032 Evans, Derrick 13B0563

Date: 5/26/14 Approx. 7:58pm

Inmates Evans, Derrick 13B0563 (I-5-17) [REDACTED] were observed fighting in the field house. I responded to the area of the fight [REDACTED]

[REDACTED] the inmates refused several direct orders to stop fighting and force became necessary. I grabbed inmate Evans from behind in a bear hug type body hold placing my right hand over inmate Evans' right shoulder and my left hand under inmate Evans' left arm. When this force was applied inmate Evans went face first to the floor. From the bear hug type position, using my left hand, I made several attempts to grab inmate Evans' left wrist from under his body. After several attempts I was able to grab inmate Evans' left wrist with my left hand. I then applied pressure to the middle of inmate Evans' back with my right hand and pulled inmate Evans' left hand behind his back. Once both hands were behind inmate Evan's back I placed mechanical wrist restraints on a still struggling inmate Evans. Once inmate Evans was in restraints he became compliant, I assisted him to his feet, and all force ceased.

Respectfully submitted

EL. Bennett C.O.



Form IC-22A

State of New York Department of Correctional Services  
Elmira Correctional Facility  
Inter-Departmental Communication

To: SUPT. CHAPPIUS

From: M. Mawhir C.O.

Subject: UOF 14-0032 Evans, Derrick 13B0563

Date: 5/26/14 Approx. 7:58pm

Inmates Evans, Derrick 13B0563 (I-5-17) [REDACTED] were observed fighting in the field house. I responded to the area of the fight [REDACTED]

[REDACTED] the inmates refused several direct orders to stop fighting and force became necessary. I grabbed inmate Evans' right pant leg with both hands and pulled inmate Evans off of [REDACTED]. When this force was applied inmate Evans went face first to the floor. Once on the floor I forced inmate Evans' right ankle behind his left knee and compressed his left leg to his buttocks trapping inmate Evans' right ankle behind the left knee allowing me to continue to maintain control of both of inmate Evans' legs until mechanical restraints were applied. I then ceased to use force on this inmate.

Respectfully submitted

M. Mawhir C.O.

*M. Mawhir*

(14)

Form IC-22A

State of New York Department of Correctional Services  
Elmira Correctional Facility  
Inter-Departmental Communication

To: SUPT. CHAPPIUS

From: M. Williams C.O.

Subject: UOF 14-0032 Evans, Derrick 13B0563

Date: 5/26/14 Approx. 7:58pm

Inmates Evans, Derrick 13B0563 (I-5-17) [REDACTED] were observed fighting in the field house. I responded to the area of the fight. [REDACTED]

[REDACTED] The inmates refused several direct orders to stop fighting and force became necessary. I grabbed inmate Evans' right pant leg with both hands and pulled inmate Evans [REDACTED] I took control of inmate Evans' right wrist with both hands and bent the inmate's wrist inward and down to his back. I held his wrist to his back until mechanical restraints were applied. I assisted inmate Evans to his feet and all force ceased.

Respectfully submitted

M. Williams C.O.





Form IC-22A

State of New York Department of Correctional Services  
Elmira Correctional Facility  
Inter-Departmental Communication

To: Supt. Chappius

From: Sgt. G. Hill

Subject: UOF 14-032

Date: 5/26/14

Sir,

At approximately 7:58pm on 5/26/14, inmates Evans, Derrick 13B0563 (I-5-17) [REDACTED] were observed fighting in the field house. Officers D. Taft and EL. Bennett responded [REDACTED]. Officers M.

Mawhir and M. Williams and several other officers responded to the fight to assist Officers Taft and Bennett. The inmates refused several direct orders to stop fighting and force became necessary. Officers Bennett, Williams and Mawhir used force on inmate Evans consisting of body holds and restraints. Once inmate Evans was in restraints he became compliant. He was assisted to his feet and all force ceased. [REDACTED]

[REDACTED] I completed form 2104 indicating the actual force used by the other officers on inmate Evans. Officers Bennett, Williams and Mawhir have written memos and they are in the UOF packet. [REDACTED] Inmate Evans' injuries were reported as 2 superficial scratches to his right arm [REDACTED]. After photos were taken and medical UOF reports were completed, the inmates were escorted to their housing locations and following cell frisks, were placed on keeplock status. [REDACTED]

Respectfully Submitted,

*G. Hill*  
G. Hill, Sergeant

# EXHIBIT B

CONTENTS:

(2) Superintendent Hearing Disposition Rendered  
sheets. Pages 1 and 3.

TAPE NUMBER : \_\_\_\_\_

LOCATION: 01-05-17S

106.10 REFUSING DIRECT ORDER  
-----

[illegible]

DIN: 13B0563 NAME: EVANS, DERRICK

HEARING DATE: \_\_\_\_\_

A. STATEMENT OF EVIDENCE RELIED UPON:

-----

B. REASONS FOR DISPOSITION:

-----

C. SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS

I HAVE RECEIVED A COPY OF THIS HEARING DISPOSITION DATED: \_\_\_\_\_

\_\_\_\_\_  
HEARING OFFICER SIGNATURE / INMATE SIGNATURE / DATE & TIME RECEIVED

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:

\_\_\_\_FOR TIER II HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.

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\_\_\_\_FOR TIER III HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

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\*\*\*SUCCESSFUL PRINT COMPLETION\*\*\*



# EXHIBIT C

## CONTENTS:

- (1) APPEAL FORM TO THE COMMISSIONER from:  
Derrick Evans Dated: 6/6/14
- (1) RESPONSE to APPEAL from: A. PRACK Dated:  
August 5, 2014.
- (1) INMATE GRIEVANCE from: Derrick Evans Dated:  
6/26/14 GRIEVANCE #EL-42772-14
- (1) SUPERINTENDENT'S RESPONSE TO GRIEVANCE  
#EL-42772-14 to: Derrick Evans.
- (1) CENTRAL OFFICE REVIEW COMMITTEE RESPONSE  
to GRIEVANCE Dated: 12/3/14.

FORM 2178A (5/02)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

# **APPEAL FORM TO COMMISSIONER** **SUPERINTENDENT'S HEARING\***

Print or Write Carefully

DIN# <b>13 B0563</b>	LAST NAME <b>EVANS</b>	FIRST NAME <b>Derrick</b>
CURRENT FACILITY <b>Elmira</b>	HEARING FACILITY <b>Elmira</b>	HEARING DATE <b>5/29/14 - 6/2/14</b>

THE SPECIFIC GROUNDS FOR MY APPEAL ARE AS FOLLOWS:

The following objections were raised during the hearing and I again raise those same objections now for the purpose of this appeal. 1) The video footage clearly shows that I did not strike inmate Williams at any time during this incident. The hearing officer was biased and unfair in his decision and penalty, in total disregard for the standards set forth in chapter V. 2) The hearing officer falsely narrated the incident into the hearing record as the video footage was playing. 3) The hearing officer would not grant me the opportunity to state my objections. 4) The hearing officer relied upon evidence that was not available to him by stating that the video camera did not capture the left side of me and William's bodies therefore the hearing officer could not tell if I was throwing closed fist punches as stated in the misbehavior report. 5) The hearing officer made an issue of why the fight started and indicated this issue as evidence relied upon when the issue had no bearing whatsoever in determining whether or not I threw punches during this incident. It is clear that the hearing officer abused his authority in this matter.

INMATE'S SIGNATURE

DATE

\*Appeals must be submitted within 30 days of receipt of the disposition.

Mail the top (white) copy to: Director of Special Housing/Inmate Discipline, Central Office

NEW YORK STATE  
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
THE HARRIMAN STATE CAMPUS - BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

JOSEPH BELLNIER  
DEPUTY COMMISSIONER  
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: EVANS, DERRICK

NO. 13B0563

HEARING FACILITY: ELMIRA

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT  
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF  
JUNE 2, 2014, HAS BEEN REVIEWED AND AFFIRMED ON AUGUST 5, 2014.

ALBERT PRACK  
DIRECTOR, SPECIAL HOUSING/  
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT  
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND  
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL  
HOUSING/INMATE DISCIPLINE PROGRAM.

USE OF FORCE / FALSE STATEMENT

49

EL42772-14

To: Inmate Grievance Committee  
Elmira Correctional Facility

From: Derrick Evans # 13B0563 Loc. I - 3-16  
Elmira Correctional Facility

Date: June 26<sup>th</sup> 2014

Re: Resubmission of Grievance dated: 6-2-14  
Unnecessary Use of Force

On May 26<sup>th</sup> 2014 force was used by several officers to allegedly break up a fight between another inmate and myself. The officer who filed the misbehavior report falsely stated that I refused to stop throwing closed fist blows to the head and torso of inmate Williams. During this entire incident I never struck inmate Williams therefore the claim made by officer Bennett of my alleged refusal of a direct order, fighting, creating a disturbance and violent conduct was solely orchestrated to justify the unnecessary use of force.

Action Requested: That all officers involved in this incident be made to answer for their illegal, assaultive behavior and disciplined accordingly.


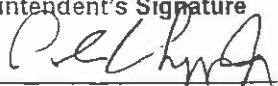
Thank You  
-D. Evans



Evans, D

13B0563

1-3-16

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES  INMATE GRIEVANCE PROGRAM  SUPERINTENDENT	Grievance No. EL42-772-14	Date Filed 7/1/14
	Facility ELMIRA CORRECTIONAL FACILITY	Policy Designation I
	Title of Grievance USE OF FORCE/FALSE STATEMENT	Class Code 49
	Superintendent's Signature 	Date 7/15/14
Grievant EVANS, D	Din 13B0563	Housing Unit I3-16

GRIEVANT CLAIMS ALLEGATIONS OF USE OF FORCE AND FALSE STATEMENTS MADE ON A MISBEHAVIOR REPORT.

CO B... DENIES THESE ALLEGATIONS.

INTERVIEWS WERE CONDUCTED AND WRITTEN STATEMENTS WERE SOLICITED AND ATTACHED.

IN CONCLUSION, THE INVESTIGATION HAS REVEALED NO EVIDENCE THAT THE ALLEGED BEHAVIOR OCCURRED.

GRIEVANCE IS DENIED.

#### APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.\* Please state why you are appealing this decision to C.O.R.C.

*This alleged investigation seems to be incomplete and biased, considering the fact that there is a DVD of the incident which is conspicuously missing from the above investigation summary*

  
 Grievant's Signature

7/21/14  
 Date

\_\_\_\_\_  
 Grievance Clerk's Signature


\_\_\_\_\_  
 Date

\* An exception to the time limit may be requested under Directive # 4040, Section 701.6(g).

EVANS

130-0563

5 Part

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION	Grievance Number EL-42772-14	Desig /Code I/49	Date Filed 7/1/14
	Associated Cases		
	Facility Elmira Correctional Facility		
INMATE GRIEVANCE PROGRAM CENTRAL OFFICE REVIEW COMMITTEE	Title of Grievance Use Of Force/False Statement		

12/3/14

**GRIEVANT'S REQUEST UNANIMOUSLY DENIED**

Upon full hearing of the facts and circumstances in the instant case, the action requested herein is hereby denied. CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that the grievant was involved in a properly documented UOF on 5/26/14 when he and another inmate refused orders to stop fighting. CO B... states that the MBR was true and factual, and that only necessary force was used to gain compliance.

CORC notes that a disciplinary hearing may be appealed in accordance with 7 NYCRR, Chapter V, and that this appeal mechanism affords the opportunity to remedy any factual or procedural errors in a disciplinary report. The disposition was affirmed by the Office of Special Housing/Inmate Discipline on 8/5/14.

CORC notes that Directive #4040, Section 701.1, states, in part, that the grievance program is not intended to support an adversary process and Section 701.6 (b) states, in part, that no reprisals of any kind shall be taken against an inmate or employee for good faith utilization of this grievance procedure. An inmate may pursue a complaint that a reprisal occurred through the grievance mechanism.

With respect to the grievant's appeal, CORC notes that Sgt. R... reviewed the video tape and his allegations remain unsubstantiated. CORC also notes that he has since been transferred.

JAD/rjq

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# EXHIBIT D

**CONTENTS:**

(1) HANDWRITTEN LETTER to: D.S.S. P.Piccolo

Dated: 6/23/14 from: Derrick Evans.

(1) MEMORANDUM from: C.Diego, Acting D.S.S.  
to: Derrick Evans Dated: 6/23/14

(1) MEMORANDUM from: C.WOJNAREK, Inmate Records  
Coordinator, certifying existance and preservation  
of USE OF FORCE CD, RECORDING.

Derrick Evans # 13B0563  
Elmira Correctional Facility  
Loc: I-3-16

To: Mr P. Piccolo  
Dep. Supt. Security.

June 23<sup>rd</sup> 2014

Re: Preservation of Video Evidence:

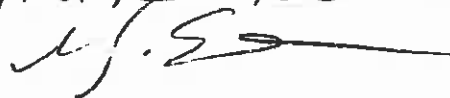
Dear Mr. Piccolo,

I hereby respectfully request that the compact disc containing video footage of the May 26<sup>th</sup> 2014 incident of which I was involved, in the field house, be preserved. This video footage constitutes evidence that may need to be viewed at a later date.

If it is possible I would like to obtain a copy of the above mentioned disc to be mailed to a third party. Please provide me with instructions.

c.c. File.

Thank You



STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION  
*ELMIRA CORRECTIONAL FACILITY*

OFFICE OF  
DEPUTY SUPERINTENDENT FOR SECURITY

*Memorandum*

**TO:** D. Evans 13B0563 I-3-16  
**FROM:** C. Diego, Acting DSS  
**DATE:** June 23, 2014  
**SUBJECT:** DVD of 5/26/14

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I am in receipt of your letter dated June 23, 2014. Please be advised that the DVD pertaining to the incident on May 26, 2014 will be held on file.



C. Diego  
Acting Deputy Superintendent for Security  
CD: ld  
CC: Inmate File



## STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES AND COMMUNITY SUPERVISION

## SOUTHPORT CORRECTIONAL FACILITY

## MEMORANDUM

TO: EVANS, DERRICK 18180863 A-12-19

FROM: C. WOJNAREK, F.O.I.L. OFFICE/INMATE RECORDS COORDINATOR 1 Wojnarek

SUBJECT: FREEDOM OF INFORMATION LAW REQUEST

DATE: 1/8/15

- ☐ This memorandum will acknowledge your Freedom of Information Law request received today. Your request is being handled.
- ☐ Photocopying costs are \$0.25/page and \$1.50/audio tape. Please submit a signed, authorized disbursement form.
- ☐ I have received your request, however, I do not know precisely what you are requesting. Please provide clarification.
- ☐ The Freedom of Information Law governs access to existing records. Our review indicates the records you requested do not exist in our files.
- ☐ Pursuant to the Freedom of Information Law, the records you requested are pre-decisional, interagency material and are exempt from disclosure; therefore, your request is DENIED.
- ☐ Pursuant to the Freedom of Information Law, the records you requested are evaluative and are exempt from disclosure; therefore your request is DENIED.
- ☐ Your disbursement form has been/will be processed in the amount of \$\_\_\_\_\_. Pursuant to F.O.I.L., the records you requested \_\_\_\_\_ are enclosed.
- ☐ Due to insufficient funds, your request cannot be processed.
- ☐ You may not use an Advanced Request form to purchase F.O.I.L. documents, therefore it is being returned.
- ☐ Your disbursement is being returned as it has not: been properly authorized / filled out for correct amount / not needed.
- ☐ For RAP Sheets write: New York State Division of Criminal Justice Services, Alfred E. Smith Building, 80 South Swan St., Albany, N.Y. 12210.
- ☐ Enclosed is a printout of \_\_\_\_\_ Discipline History \_\_\_\_\_ Time Computation \_\_\_\_\_ Visitor List \_\_\_\_\_ Overview  
\_\_\_\_\_ Other: \_\_\_\_\_
- ☐ Your request has been forwarded to your Offender Rehabilitation Coordinator (ORC) for your review of: \_\_\_\_\_
- ☐ FOIL does not require that we answer questions and/or do research, only provide specifically requested documents providing that they exist.
- ☐ Your request has been forwarded to \_\_\_\_\_ for processing.
- ☐ You have been added to the list to review your hearing tapes / legal file.

X BIRTH CERTIFICATE + U.O.F. CD IN YOUR  
PERSONAL PROPERTY BAG IN INMATE RECORDS

# EXHIBIT E

CONTENTS:

(1) INMATE GRIEVANCE from: Derrick Evans  
GRIEVANCE #EL-42953-14 Dated: 8/20/14

(1) I.G.R.C. REPONSE TO GRIEVANCE #EL-42953-  
14 Dated: 9/5/14

Preserve  
DVDDerride Evans #13B0563  
Elmira Correctional FacilityTo: I. G. R. C. EL42953-14  
Elmira Corr. Fac.August 20<sup>th</sup> 2014

In a letter dated June 23<sup>rd</sup> 2014 to the Dep. Supt. Sec. I formally requested the preservation of a DVD which contained video of an incident that occurred on 5/26/14 in the fiddhouse for which I was written a tier III misbehavior report.

Not only did I request preservation of this DVD but I also requested information on how to send a copy of the DVD to a third party.

Capt C. Diego responded to my letter in part by verifying that the DVD would be preserved on file, but failed to stipulate how long the DVD would be preserved or providing me with the information I requested on how to mail a ~~a~~ copy to a third party.

Action Requested: I am requesting that that DVD be preserved until such a time as I am able to obtain a copy and send such copy to a third party and that copy is certified to contain the footage in question.

Thank You

J. S.

FORM 2131E (REVERSE) (REV. 6/06)

Response of I.G.R.C.

EL42-953-14	NAME: EVANS, D.	DIN: 13 B 0563	LOC: G 1 33	DATE: 9/5/14
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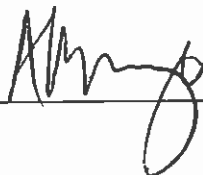
It is the recommendation of the IGRC that this grievance is **DENIED**. Directive 4040(701.5)(b)(4)(i)(c)(4). Additional information at the hearing revealed grievant is pursuing this issue via a FOIL request, which was denied because the DVD in question was reported to not exist. Grievant must appeal this FOIL decision, and may attach any documents he has to that appeal to show the DVD had been preserved.

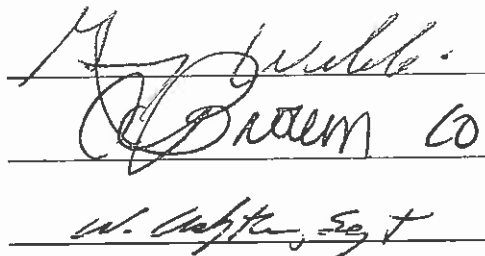
Date Returned To Inmate

9/8/14

I.G.R.C. Members

Chairperson





Return within 7 calendar days and check appropriate boxes. \*

☐ I disagree with I.G.R.C. response and  
Wish to appeal to the Superintendent.

☐ I have reviewed deadlocked response.  
Pass-Thru to Superintendent.

☐ I agree with I.G.R.C. response and  
Wish to appeal to the Superintendent.

☐ I apply to the I.G.P. Supervisor for  
review Of dismissal

Signed

Grievant

Date

Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk.

Grievance Appealed to the Superintendent

Date

Grievance forwarded to the Superintendent for Action

Date

\* An exception to the time limit may be requested under Directive # 4040, Section 701.6(g)

# EXHIBIT F

CONTENTS:

(1) HANDWRITTEN LETTER to: Z.CICCONI, NURSE  
ADMINISTRATOR Dated: 8/1/14

(1) HANDWRITTEN MESSAGE Dated: 8/5/14 to:  
Derrick Evans

Derrick Evans #13B0563  
Elmira Correctional Facility  
Loc: I-3-16

To: Z. Cicconi, Nurse Administrator

August 1<sup>st</sup> 2014

On May 26<sup>th</sup> 2014 Use of Force was applied to my person by security staff at this facility. Since that day I have been having progressive pain in my lower and upper back / spine areas. I subsequently signed up for sick call, was given non-aspirin and told that I would be placed on the list to see the doctor.

There is an issue that I am having with the very same officer whom conducts keeplock escorts from I block to the medical unit, and I am afraid for my safety & well being should I leave my cell for any reason, especially to be escorted by this officer. As a result I missed my doctor / nurse callout earlier this week.

This issue that I'm having is preventing me from seeking proper medical treatment for my injury and I'm respectfully requesting that I be seen at my cell by a member of the medical staff as soon as possible in order to avoid filing a grievance.

C.C. File

Thank You  
M. Eo



STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES  
ELMIRA CORRECTIONAL FACILITY

To: EUGEN D DIN: T 3-16

Cell Location: 13B0563

MESSAGE

Continue to use AM sick call  
as needed.  
Your provider appointment will be  
rescheduled.

Date: 8-5-14 Signed: [Signature]

# EXHIBIT G

CONTENTS:

(1) HANDWRITTEN LETTER to: M.H.U. from: Derrick  
Evans Dated: 6/24/14.

To: M.H.U.  
Elmira Correctional Facility

From: Derrick Evans # 13B0563  
Elmira Correctional Facility Loc: I-3-16  
Date: June 24<sup>th</sup> 2014

Dear Sir / Madam,

For the past 2 weeks or so I have been experiencing nightmares of correction officers beating me to death. I'm finding it hard to sleep more and more because of these nightmares. I wake up sweating, confused not knowing where I am. This has happened several times and lately is happening more often. I am afraid that correction officers will come into my cell and beat me. and I am afraid to leave my cell for recreation and call-outs, I am also more afraid to refuse my call-outs fearing that this will give officers ~~an~~ an excuse to come into my cell and beat me. On May 26<sup>th</sup> 2014 officers used force on me for no good reason and I feel as though they are waiting for the chance to do it again to kill me.

Thank You  
if. Se

END OF EXHIBITS

Derrick Evans #13B0563  
Great Meadow Correctional Facility  
P.O. Box 51  
Amstock, N.Y. 12821



45 per  
v. one

Clerk of the United States District Court  
Western District of New York  
100 State Street  
Rochester, N.Y. 14614-1387

